

SEP 12 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALBERTO CASTRO FIERRO; et al.,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-70468

Agency Nos. A75-697-365
A75-697-366

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted September 8, 2008**

Before: TASHIMA, SILVERMAN, and N.R. SMITH, Circuit Judges.

Alberto Castro Fierro and Carolina Castro, natives and citizens of Mexico,
petition pro se for review of the Board of Immigration Appeals' denial of their

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

motion to reopen as untimely. In the motion to reopen, petitioners sought to apply for protection under the Convention Against Torture ("CAT") following the underlying denial of their application for cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition for review.

Petitioners filed their motion to reopen outside the ninety-day time limit set forth in 8 C.F.R. § 1003.2(c)(2). Petitioners contend that their motion to reopen was timely because there is no time limit for a motion to reopen that seeks relief under CAT. Petitioners, however, failed to establish that changed country conditions have occurred in Mexico that are material to their case, and the generalized evidence attached to their motion does not establish a *prima facie* case of eligibility for CAT relief. *See Nuru v. Gonzales*, 404 F.3d 1207, 1216 (9th Cir. 2005). The BIA, therefore, did not abuse its discretion in denying the motion to reopen as untimely.

PETITION FOR REVIEW DENIED.